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Counsel for Orangefair Marketplace, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----	:	Chapter 11
In re:	:	
	:	Case No. 08-35653 (KRH)
CIRCUIT CITY STORES, INC.	:	
et al.,	:	Jointly Administered
	:	
Debtors.	:	
-----	:	

**ORANGEFAIR MARKETPLACE LLC'S RESPONSE TO LIQUIDATING TRUST'S
FORTY-FIRST OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION OF
CERTAIN INVALID CLAIMS-MITIGATION)**

Orangefair Marketplace LLC (“Orangefair”), by counsel, responds as follows to the Liquidating Trust’s Forty-First Omnibus Objection to Landlord Claims-Mitigation (“Forty-First Omnibus Objection”) [Doc. 11852]:

1. Orangefair filed Claim No. 13085 on May 29, 2009, in the amount of \$640,198.46, for rents that debtor Circuit City Stores, Inc. (“Debtor”) owed Orangefair for a lease of property owned by Orangefair.
2. In the Forty-First Omnibus Objection, the Trust objects to Orangefair’s Claim No. 13085 on mitigation grounds.
3. The lease between Orangefair and Circuit City Stores West Coast Inc., a copy of which is attached hereto as Exhibit A, did not end until January 31, 2017.
4. The Debtor rejected the lease on October 31, 2008.
5. Orangefair immediately sought to re-let the property but was unable to find another tenant until Best Buy agreed to rent the property beginning on July 23, 2010.
6. Orangefair’s lease with Best Buy expires on January 31, 2021, and provides for monthly rent of \$28,575 for years 1 through 5 and monthly rent of \$30,956.25 for years 6 through 10, as well as common area maintenance (“CAM”) charges of \$3,392.04 per month; Best Buy reimburses for insurance on a monthly basis of \$1,448.72 and reimburses for the actual cost of property taxes.
7. Because Debtor rejected the lease prematurely, rent was not paid from November 1, 2008 through July 22, 2010.
8. Pursuant to the terms of the lease with Debtor, and as detailed in Claim No. 13085, the Debtor owes pre-petition rent in the amount of \$35,327.65.

9. Pursuant to the terms of the lease, and as detailed in Claim No. 13085, the Debtor owes post-petition damages in the amount of \$604,870.81.

10.11 U.S.C. § 502(b)(6) provides that damages for the rejection of a lease of property shall be calculated follows:

(A) the rent reserved by such lease, without acceleration, for the greater of the one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of –

- i. the date of the filing of the petition; and
- ii. the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates.

11. Pursuant to 11 U.S.C. § 502(b)(6), Orangefair is entitled to unpaid pre-petition rent in the amount of \$35,327.65 plus rejection damages of \$604,870.81, for a total of \$640,198.46.

12. By re-letting the property, Orangefair attempted to and did mitigate its damages.

WHEREFORE, the Court should overrule the Forty-First Omnibus Objection as it pertains to Orangefair's Claim No. 13085 and allow Claim No. 13085 in full.

Respectfully submitted,

/s/ Anne G. Bibeau
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CERTIFICATE OF SERVICE

I certify that on July 9, 2012, I will file the preceding with the Court's CM/ECF system which will cause a copy of it to be electronically served on all users registered to receive electronic notice in this case.

/s/ Anne G. Bibeau
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